

Corporate Securities Law

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CSA Release Proposed Proxy Voting Protocols

The Canadian Securities Administrators (CSA) have published Staff Notice 54-304, which sets out proposed operational protocols designed to enhance the accuracy, reliability and accountability of proxy voting in Canada. The protocols contain a number of recommendations to various participants in the proxy voting process for improving existing systems and processes.

Background

The CSA have been examining Canada's proxy voting infrastructure since 2013. This review involved an extensive consultation process as well as a detailed review of proxy voting at six shareholder meetings. The proposed protocols represent the CSAs' first attempt to address a number of the problems identified in their review.

For more information on earlier stages of this initiative, see our August 20, 2013 Update, *Public Consultation Process for Proxy Voting Infrastructure* and our January 30, 2015 Update, *CSA Publish Progress Report on Review of the Proxy Voting Infrastructure*.

The Protocols

The protocols outline the CSAs' views on appropriate roles and responsibilities of a number of the key participants in the proxy voting process - including CDS, intermediaries, Broadridge and transfer agents (in their capacities as vote tabulators) - as well as operational processes these participants should adopt.

The protocols are primarily aimed at ensuring that:

- vote tabulators receive the information they require to accurately establish the voting entitlements of intermediaries such as custodians and investment dealers; and

- vote tabulators and intermediaries establish standard communication channels to facilitate the exchange and confirmation of information relating to voting entitlements and any potential problems relating to proxies that are submitted to the tabulator.

Many of the protocols are fairly technical in nature and address detailed operational matters such as how intermediaries should use supplemental omnibus proxies to transfer voting entitlements to each other. The CSA believe that the protocols also lay the foundation for more significant improvements in the proxy voting process, such as moving to an entirely electronic system (i.e., eliminating paper proxies) and developing "end-to-end" confirmation capabilities that would allow beneficial shareholders to verify that their shares have been voted in accordance with their instructions.

Next Steps

The CSA are requesting comments on the draft protocols until July 15, 2016 with a view to publishing final protocols by the end of the year. The extent of voluntary adoption of the protocols in 2017 would then be monitored. The CSA also intend to establish a technical committee to continue examining ways that the proxy voting system can be improved.

Conclusion

The protocols are an important first step in attempting to address, in a systematic way, a number of the most pressing issues with proxy voting in Canada such as over-voting, missing votes and shareholders' inability to confirm whether their shares have been voted in accordance with their instructions. While many of the protocols seem entirely sensible and uncontroversial, their impact may be limited; the protocols are not mandatory and require the cooperation of a number of market participants having different perspectives on the utility of the protocols and how to best implement them.

Goodmans^{LLP} Update

More importantly, the protocols are limited to addressing perceived operational problems within the existing proxy voting infrastructure. They do not address any of the larger structural issues, such as the multiple layers of separation between beneficial shareholders and issuers, that give rise to many of the concerns that the CSA are trying to address. These are much bigger problems and the relatively modest scope of the CSAs' initial proposal perhaps indicates how difficult they are to address.

Please contact any member of our Corporate Securities Group to discuss these latest developments.